

DOCKET NO. 05-35264

IN THE UNITED STATES DISTRICT COURT
FOR THE NINTH CIRCUIT

FILED

JUN 8 1 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

RANCHERS CATTLEMEN ACTION
LEGAL FUND UNITED
STOCKGROWERS OF AMERICA,

Appellee/Plaintiff

vs.

UNITED STATES DEPARTMENT OF
AGRICULTURE,
ANIMAL And
PLANT HEALTH INSPECTION
SERVICE,
and
MIKE JOHANNNS,
In His Capacity as
U.S.SECRETARY OF AGRICULURE,

Appellee/Defendants

vs.

NATIONAL MEAT ASSOCIATION,

Appellant/Proposed Defendant and
Cross Plaintiff-Intervenor.

Appeal from CV-05-06-BLG-RFC
Dist. of Montana, Billings Div.

Motion of Proposed Amici Curiae
Sixty-Seven (67)

National, State & Regional
Consumer and Research Groups,
Public Interest Organizations,
Farm and Ranch Organizations,
And
Local and Private Organizations

For Leave to File Brief
in Support of
Plaintiff-Appellee R-CALF USA
and Supporting Affirmance

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The proposed Amici Curiae, include sixty-seven (67) national, state, regional and local groups representing more than fifty (50) million Americans. They are identified in the attached appendix. These Amici Curiae respectfully request leave pursuant to FRAP 29(b) to file the accompanying brief in support of Plaintiff Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America. They support this Court's affirmance of the intervention and preliminary injunction decisions below and they argue, in support of the R-Calf position, that 9 CFR Pts 93-95, permitting importation of live cattle from a known diseased region, is invalid.

1. **Movants' Interests.** The national, state, regional and local organizations, entities, and persons seeking leave to file their brief as amici curiae include sixty-seven (67) Consumer Groups, Public Interest Organizations, Research Organizations, Religious Groups, Farm and Ranch Associations, and food producers. Collectively they represent over fifty (50) million consumers, citizens and food producers from across the United States, all of whom consume an average 62 pounds of beef per year.¹ The amici are, therefore, representative of more than one-sixth (1/6th) of the U.S. population. They favor protection of public health, animal health, safe food, non-arbitrary rulemaking, and consistency with

¹ USDA Econ Res Serv, 2003 per capita food consumption statistical table, www.ers.usda.gov/data/foodconsumption/FoodAvailQueryable.aspx#midForm.

past disease control measures. Movants thus oppose the USDA “Minimal Risk” Rule as an unscientific, arbitrary, capricious, unlawful, and inconsistent, and wrong-headed agency action placing the public and animal health, the food supply, the agricultural economy and consumer confidence at risk.

2. Reasons for this Amici Brief. The Amici constitute a cross section of more than one-sixth ($1/6^{\text{th}}$) the American population, extending from coast to coast and border to border, with vital interests in (a) public health and safety, (b) animal health, (c) consistency in American public health policy, (d) sustainability of a safe food supply, and (d) a sound economy. They range in orientations from urban to rural, liberal to conservative, old to young, and rich to poor. They are diverse, and differ widely in orientations, experiences, and educations. Yet, they are Americans.

The Amici have broader interests than R-CALF USA, the Plaintiff. Many Amici have concerns, and have worked to resolve concerns through comment submissions in the US Dept. of Agriculture (“USDA”) and its Animal and Plant Inspection Service (“APHIS”) during its rulemaking processes. They believe a strong national policy on food and food safety, and a consistent policy on public health, are vital to the American economy, the health of the public, and good government.

The Amici offer arguments concerning the challenged Rule that differ from those of R-Calf or other parties. Their Brief analyzes the Rule strictly from the perspectives of its content, science, juxtaposition with other USDA and other health agencies, policies, and with views toward human and livestock health. They do not present economic arguments.

The Amici seek to present arguments relevant to case disposition because their arguments demonstrate fresh and new perspectives concerning:

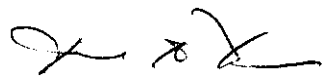
The Rule's inconsistency with USDA, FDA, and other agency public policy criteria for public health agencies regulating products injected, ingested or inserted in the body.

The Rule violates 7 USC § 8301 and 5 USC § 702, 706 by violating USDA public health and safety rule making requirements.

The Amici strive, in the accompanying Brief, to present points of view new and distinct from those of other parties.

June 1, 2005.

Respectfully submitted,

By 
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Certificate of Mailing

The undersigned hereby certifies that on June 1, 2005, a copy of the foregoing Motion for Leave to File Brief Amici Curiae has been placed in the United States Mail, post prepaid, addressed to the following:

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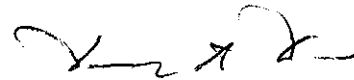
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APPENDIX To MOTION For LEAVE To FILE
BRIEF OF AMICI CURIAE

Identity of Proposed Amici Curiae

NATIONAL ORGANIZATIONS

1. Consumer Federation of America (“CFA”), Washington, DC, is an advocacy, research, education, and service organization. CFA works to advance pro-consumer policy on a variety of issues. CFA represents nearly 50 million citizens.
2. National Farmers Union, Washington, DC and Aurora, CO is a national, general farm organization based in Washington, DC with over 300,000 members.
3. Public Citizen, Washington, DC and Oakland, CA, is a nonprofit corporation representing 150,000 consumer and citizen members before Congress and the courts on public health and nutrition issues.
4. The Organization for Competitive Markets (“OCM”), Lincoln, NE, is a nonprofit research and education corporation focusing on agricultural antitrust and trade issues.
5. Center for Food Safety, Washington, DC, works to protect human health and the environment by curbing the proliferation of harmful food production methods and practices.
6. National Catholic Rural Life Conference (“NCRCL”), Des Moines, IA, is the lead voice for the Catholic Church on agricultural issues in the United States.
7. National Farmers Organization (“NFO”), Ames, IA. The NFO, founded in 1955 to express agricultural and rural interests on issues is now a sophisticated source for ag risk management products and seeks to assure

more effective marketing techniques for producers of America's food supply.

8. The CJD Foundation, Akron, OH, is a nonprofit corporation engaged in research, family support, health care provider education, and public policy advocacy towards greater awareness and effective responses to Creutzfeld-Jacob Disease ("CJD"), including variant CJD caused by ingesting BSE infected beef.
9. Women Involved in Farm Economics ("WIFE"), Burdett, KS. WIFE, formed in 1976, represents women vitally interested in ag and food quality issues. It is a national organization with state chapters.
10. Institute for Agricultural & Trade Policy ("IATP"), Minneapolis, MN. IAPT promotes resilient family farms, rural communities and ecosystems around the world through research and education, science and technology, and advocacy.

REGIONAL and STATE ORGANIZATIONS

11. California Farmers Union, Turlock, CA, is a general farm organization working on behalf of California farmers and ranchers.
12. Cattle Producers of Washington, Soap Lake, WA, is a nonprofit corporation representing cattle producers in Washington State.
13. Central Colorado Cattlemen's Association, Fairplay, CO, is a nonprofit corporation representing Colorado cattle producers.
14. Dakota Resource Council, Dickinson, ND, is a nonprofit corporation representing the interests of North Dakota farmers, ranchers and citizens on environmental and agricultural issues in.

15. Dakota Rural Action, Brookings, SD, is a nonprofit corporation representing the interests of farmers, ranchers and citizens on environmental and agricultural issues in South Dakota.
16. Illinois Cattlemen's Association, Cambridge, IL, is a nonprofit association representing Illinois cattle producers.
17. Illinois Farmers Union, Springfield, IL, is a general farm organization working on behalf of Illinois farmers and ranchers.
18. Independent Cattlemen of Nebraska, Hyannis, NE, is a nonprofit corporation representing cattle producers in Nebraska.
19. Iowa Farmers Union, Ames, IA, is a general farm organization working on behalf of Iowa farmers and ranchers.
20. Just Food, New York, NY. Just Food is a non-profit organization that works to develop a just and sustainable food system in the New York City region.
21. Kansas Cattlemen's Association, Brewster, KS, is a nonprofit corporation representing cattle producers in Kansas.
22. Kansas Farmers Union, McPherson, KS, is a general farm union working in behalf of Kansas farmers and ranchers.
23. Merced- Mariposa Cattlemen's Association, Merced, CA, is a central California group of cattle producers working on behalf of its members to promote the livestock industry and livestock health.
24. Michigan Farmers Union, Sparta, MI, is a general farm organization working on behalf of Michigan Farmers.
25. Minnesota Cattlemen's Association, Backus, MN, is a nonprofit association representing Minnesota cattle producers.
26. Minnesota Farmers Union, St. Paul, MN, is a general farm organization working to preserve and improve rural Minnesotan's quality of life.

27. Mississippi Livestock Markets Association, Jackson, MS, is an association of livestock auction markets in Mississippi.
28. Missouri Farmers Union, Jefferson City, MO, is a general farm organization working on behalf of farmers and ranchers in Missouri.
29. Montana Cattlemen's Association, Billings, MT, is a nonprofit corporation representing cattle producers in Montana.
30. Montana Farmers Union, Great Falls, MT, is a general farm organization working on behalf of Montana farmers and ranchers.
31. New England Small Farm Institute, Belchertown MA. The NESFI promotes small farms, healthy farming, and safe, chemical and disease-free foodstuffs.
32. Nebraska Farmers Union, Lincoln, NE, is a general farm organization working on behalf of Nebraska farmers and ranchers.
33. Nevada Livestock Association, Elko, NV, is a nonprofit corporation representing cattle producers in Nevada.
34. North Dakota Farmers Union, Jamestown, ND, is a general farm organization working on behalf of North Dakota farmers and ranchers.
35. Northern Plains Resource Council, Billings MT promotes healthy agriculture and the welfare of producers and their resources, including livestock, on the nation's northern plains.
36. Oregon Livestock Producers Association, Jordan Valley, OR, is a nonprofit corporation representing Oregon cattle producers.
37. Pennsylvania Farmers Union is a general farm organization working on behalf of Pennsylvania farmers.
38. Rocky Mountain Farmers Union, Denver CO, is a general farm and ranch association representing the interests of producers of all commodities in Colorado, Wyoming and New Mexico.

39. South Dakota Farmers Union, Huron, SD, is a general farm organization working on behalf of South Dakota farmers and ranchers.
40. South Dakota Livestock Marketing Association is an association of livestock auction markets in South Dakota.
41. South Dakota Stockgrowers Association, Rapid City, SD, is a nonprofit corporation representing cattle producers in South Dakota.
42. South Montana Angus Association, Bozeman, MT, promotes beef production and healthy livestock.
43. Texas Farmers Union, Waco, TX, is a general farm organization working on behalf of Texas farmers and ranchers.
44. Utah Farmers Union, Howell, UT, is a general farm organization working on behalf of the farmers and ranchers of Utah.
45. Western Organization of Resource Councils (“WORC”), Billings, MT, is a regional network of seven grassroots community organizations that include 9,500 members and 46 local chapters in Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, and Wyoming. WORC focuses on family farm and environmental issues.
46. Wisconsin Farmers Union, Chippewa Falls, WI, is a general farm organization working on behalf of Wisconsin farmers and ranchers.

LOCAL and PRIVATE ORGANIZATIONS

47. Crowley-Kiowa-Lincoln Counties Cattlemen’s Association is an organization of cattle producers in eastern Colorado with vital interests in herd health and consumer food supply confidence.
48. Eagle County Cattlemen's Association, Burns, CO, is a nonprofit corporation representing cattle producers in Eagle County, Colorado.
49. Franz Beefmasters, Burlington, CO, is a ranch operation.

50. Harding County Stockgrowers Association, Buffalo, SD, is an association representing cattle producers in Harding County, South Dakota.
51. Harrison County Cattlemen's Association, Bethany, MO, promotes and nurtures all phases of the live cattle industry in Missouri.
52. Henry County Beef Association, Cambridge, IL, is a nonprofit association representing cattle producers in Henry County, Illinois.
53. Kit Carson County Cattlemen's Association is an association representing cattle producers in Kit Carson County, Colorado.
54. Lincoln County Stockman's Association, Ordway, CO, is an association representing cattle producers in Lincoln, Colorado.
55. Modoc County Cattlewomen, Alturas CA, promote beef quality and beef and livestock safety.
56. Morrow County Livestock Growers Association, Heppner, OR, represents local livestock producers with vital interests in consumer confidence in safe beef, and in herd health.
57. Muddy Valley Ranch LLC, a private ranching company. Kimmi Lewis, principal.
58. Mundell Ranch, Walsh, CO, is a ranch operation.
59. Powder River Basin Resource Council is a nonprofit organization based in Wyoming working for the preservation and enrichment of Wyoming's agricultural heritage and rural lifestyle.
60. Schreiber Ranch, Woodrow, CO is a ranch operation.
61. Sheridan County Chamber of Commerce, Sheridan, WY works to actively promote a positive business and economic climate in Sheridan County.

62. Southeast Wyoming Cattle Feeders Association is a nonprofit corporation representing cattle producers in southeast Wyoming.
63. Southwestern Colorado Livestock Association is a nonprofit corporation representing cattle producers in Colorado.
64. Spokane County Cattle Producers, Cheney, WA, is an association representing cattle producers in Spokane County, Washington.
65. Stirling T. Spencer of the Bar Z Ranch, Carrizozo, NM, is a cattle rancher.
66. Washington County Stockman's Association, Woodrow, CO, is an association representing cattle producers in Washington County, Colorado.
67. Wilda Wisconsin Independent Livestock Dealers Association, Viola, WI, is a nonprofit association representing independent livestock dealers in Wisconsin.

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